IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 280 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

RUTESHBHAI K. BHATT

Appearance:

1. INCOME TAX REFERENCE No. 280 of 1992
MR MANISH R BHATT for Petitioner No. 1
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 12/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MS.JUSTICE H.N.DEVANI)

1 The following question has been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' under Section 256(1) of the Income Tax Act,1961 (the Act), for the opinion of this Court at the instance of the Commissioner of Income Tax, Gujarat II, Ahmedabad :

"Whether, in law and on fact, the Appellate Tribunal is right in sustaining the order of the Commissioner of Income-tax (Appeals) in deleting interest charged by the Income-tax Officer under section 215 of the Income-tax Act,1961?"

2 The Assessment Year is 1982-83 and the relevant accounting period is the year ended on 31/12/1981. The Income Tax Officer charged interest under Section 215 of the Act consequent to the order of the Commissioner under Section 263 of the Act.

3 The assessee carried the matter in Appeal before the CIT(Appeals), who deleted the interest charged by the Income Tax Officer under Section 215 of the Act on the ground that sub-section (3) of Section 215 of the Act came into effect only from 1/4/1985 and was therefore, not applicable for the Assessment Year 1982-83.

4 The revenue carried the matter in Appeal before the Tribunal. The Tribunal for the reasons stated in the order dated 31/05/1991 upheld the order of CIT(Appeals) and dismissed the Appeal of the revenue.

5 The issue in question stands concluded against the revenue by a direct decision of this Court in the case of Commissioner of Income Tax Vs. Vishwajit Mehta, (2002) 254 ITR 66.

6 In light of the fact that the issue stands answered by the aforesaid decision of this Court it is not necessary to set out the facts and contentions in detail, and for the reasons stated in the case of CIT Vs. Vishwajit Mehta (supra) the question referred to the Court is answered in the affirmative i.e. in favour of the assessee and against the revenue.

7 The Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta,J)

(H.N.Devani,J)

m.m.bhatt